

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
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June 29, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 652:16-a, a STATUTE related to the term "undeclared voter," enacted by the Laws of 1993 Chapter 193.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 652:16-a, a STATUTE related to the term "undeclared voter," enacted by the Laws of 1993 Chapter 193.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 193 (1993) enacting RSA 652:16-a is attached. (Exhibit 652:16-a A)
- b) Not applicable
- c) The changes made by amendments to RSA 652:16-a are as follows:
 - 1. Chapter 193 (1993) enacts RSA 652:16-a

- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

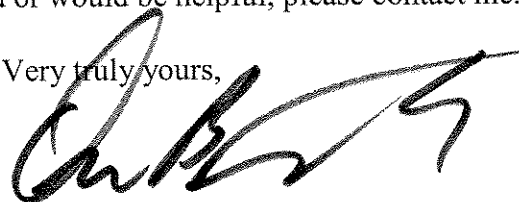
The legislature through a bicameral process passed law to create Chapter 193 (Exhibit 652:16-a A). The bill was signed into law (by the Governor) on June 9, 1993, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
 - 1. Chapter 193 (1993) adopted on June 9, 1993
- j) Effective dates:
 - 1. Chapter 193 (1993) effective August 8, 1993
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 193 (1993) enactment is to define "undeclared voter" to be used in all related election laws. This statute in conjunction with other changes which have been or will be submitted separately for preclearance clarified that undeclared voters could register as a member of a party for the purpose of voting in primary elections and re-register as an undeclared voter on the same day after the election.

- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) This submission seeks preclearance of the enactment of RSA 652:16-A.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 652:16-a B is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

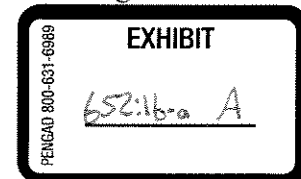
Very truly yours,



Orville B. Fitch II
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HOUSE BILL - FINAL VERSION**1993 SESSION** 0002B

93-0019

10

HOUSE BILL NO. 490

INTRODUCED BY: Rep. Whittemore of Merr 13; Rep. Holden of Hills 14;

Rep. Flanagan of Rock 14; Rep. Gilmore of Straf 11;

Rep. Lown of Hills 14

REFERRED TO: Constitutional and Statutory Revision

AN ACT permitting a registered voter who is registered as undeclared to vote in a primary election and on the day of the primary election register again as undeclared.

ANALYSIS

This bill permits a voter who is registered as undeclared to vote in a primary election and then register once again as undeclared on the same day that the person votes.

The bill also adds a definition of "undeclared voter" to the general provisions of the election law statutes.

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EXPLANATION: Matter added appears in ***bold italics***.

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

0002B

93-0019

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CHAPTER 193

HOUSE BILL - FINAL VERSION

HB 490

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand

nine hundred and ninety-three

AN ACT

permitting a registered voter who is registered as undeclared to vote
in

a primary election and on the day of the primary election
register again as undeclared.

Be it Enacted by the Senate and House of Represen-
tatives in General Court convened:

193:1 New Section; Undeclared Voter Defined. Amend RSA 652 by
inserting after section 16 the following new section:

652:16-a The term "undeclared voter" shall mean a voter who is
registered as a member of no political party.

193:2 Previously Unregistered Voters. Amend the introductory
paragraph of RSA 654:34, II to read as follows:

II. Change of registration of a voter [whose party membership has
not been previously] **who has been** registered **as an undeclared
voter.**

193:3 Previously Unregistered Voters. Amend RSA 654:34, II(a) and
(b) to read as follows:

(a) Any legal voter who has [not] been registered as [a
member of any party] **an undeclared voter** may register as a
member of the party of [his] **the voter's** choice by appearing
before the supervisors of the checklist for [his] **the voter's**
town or ward any time they meet, except as prohibited by
paragraph IV, and stating to them, under oath or affirmation,

if required, that [he] **the voter** intends to affiliate with and generally supports the candidates of the party with which [he] **the voter** offers to register, in which case [he] **the voter** shall be registered as a member of such party.

(b) [He] **A voter** may also register as a member of a party at any primary by requesting [that he] **to** be registered as a member and voting the ballot of the party of [his] **the voter's** choice. **A voter may also register once again as an undeclared voter after voting in a primary as a registered member of a party by returning the card provided for in paragraph V to the person at the polls designated by the town or city clerk to accept the card. All such cards shall be in the possession of the supervisors of the checklist at the close of the polls on election day.**

193:4 Change in Party Registration. Amend RSA 654:34, III to read as follows:

III. Notwithstanding any provision of paragraphs I and II to the contrary, no person who has voted in a primary may thereafter on the day of said primary change [his] **the person's** party registration [or change his registration so that he is registered as a member of no party], **unless, prior to voting in the primary, the person was registered as an undeclared voter, in which case the person may once again register as an undeclared voter, as provided in subparagraph II(b).**

193:5 New Paragraph; Registration Card for Undeclared Voters. Amend RSA 654:34 by inserting after paragraph IV the following new paragraph:

V.(a) At any primary, the supervisors of the checklist shall make available within the polling place a card to enable a voter who was registered as an undeclared voter but who changed registration on the day of the primary in order to vote as a registered member of a party to change registration so that the voter is registered once again as an undeclared voter. The card shall be in substantially the following form:

Name _____

(Print)

Address _____

I hereby request that my political party registration be changed as follows:

From: Democrat / / or Republican / / or Libertarian

To: Undeclared / /

Signed under the pains and penalties of perjury.

(b) The supervisors of the checklist, upon receipt of such a card, shall keep it until their next session of supervisors of the checklist for changing party registration at which time the sender's party registration shall be changed as indicated on the card.

193:6 Previously Unregistered Voters. Amend RSA 659:14 to read as follows:

659:14 Special Provisions for State and Presidential Primary Elections.

I. A person desiring to vote at a state or presidential primary election shall, at the time of announcing [his] **the person's** name, also announce the name of the party to which [he] **the person** belongs or whether [he] **the person** is [not] registered as [a member of any party] **an undeclared voter**. If [his] **the person's** party membership has been registered before, [he] **the person** shall be given only the ballot of the party with which [he] **the person** is registered, unless [he] **the person** desires to vote the ballot of a party not having official existence at the time [his] **the person's** party membership was previously registered. If the rules of a party permit a person who is [not] registered as [a member of any party] **an undeclared voter** to vote in the party's primary, any person desiring to vote in that party's primary shall also announce the name of that party at the time of announcing [his] **the person's** name. No person shall be permitted to vote in any more than one party primary during any primary election.

II. The secretary of state shall include on the voter instruction cards required by RSA 658:28 whether a party rule has been adopted which permits a person who is [not] registered as [a member of any party] **an undeclared voter** to vote in the party's primary. The party chairman shall notify the secretary of state in writing prior to the filing period for state offices whether the party has adopted such a rule. This rule shall not be changed or rescinded by a party until the results of the primary have been announced, and any change or rescission shall be mailed to the secretary of state by the party chairman.

193:7 Effective Date. This act shall take effect 60 days after its passage.

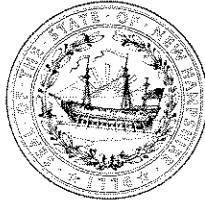
Approved: June 9, 1993

Effective: August 8, 1993

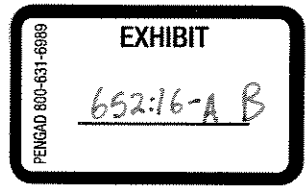
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News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov